

TRANSCRIPTION OF REP. E. MARKEY TAPE

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1 going to trust this to send electronic fund transfers
2 overseas? Will the French or Koreans or Japanese use it
3 for highly sensitive commercial conversations or
4 transactions? Of course they won't. American companies
5 will suffer the economic consequences of this Cold War,
6 anti-diluvian, anti-digital policy.

7 The current government policy makes little
8 sense and ought to be thrown out.

9 We can fight terrorism and a criminal
10 underworld, but we cannot hold back the future until
11 everyone is ready for it.

12 The estimated number of hacker attacks on
13 Department of Defense networks in 1995 was 250,000. In
14 1996, that number was 500,000 attacks. The Defense
15 Information Systems Agency estimates that 65 percent are
16 successful attacks, and in the private sector, things
17 are not different.

18 Earlier this year, in a survey conducted for
19 the FBI by the Computer Security Institute, a San
20 Francisco based research organization, it was found that
21 75 percent of the surveyed companies had been victimized
22 by computer-related crime in the preceding year. Almost
23 60 percent could place a dollar amount on their losses,
24 and the average per company was \$400,000. And the
25 National Computer Security Association estimated that 67

1 percent of the companies had equipment affected by
2 viruses this year.

3 Actually, the new political correct term for
4 "virus," that we should all start using, is electronic
5 microorganism. The era of the electronic micro --
6 electronic innocence is over, and it's clearly over.
7 The encryption debate is one that is fundamental to
8 private -- to personal privacy and to the ultimate
9 success of electronic commerce.

10 And the various versions of the encryption
11 legislation sitting before the House Rules Committee
12 will have to be worked out and reconciled, but it is
13 important for us to have this debate as a society.
14 Because society is both excited and threatened by the
15 rapid pace of technological change currently underway.

16 And what is the character of this change?
17 Thomas Mann once said, "A great truth is a truth whose
18 opposite is also a great truth."

19 In my opinion, the great truth of the
20 Information Age is that the wondrous wire that brings
21 new services to homes, businesses and schools, will have
22 a certain Dickensian quality to it: It will be the best
23 of wires and the worst of wires simultaneously.

24 It can uplift society as well as debase it.
25 It can promote electronic commerce, democratize mass

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1 media, allow people to telecommute to work and to
2 educate themselves. New digital technologies and other
3 innovations allow corporations to become more efficient,
4 workers more productive, and businesses to conduct
5 commerce almost effortlessly in digital dollars.

6 The same technology, however, may
7 simultaneously avail corporations of the opportunity to
8 track the clickstream of a citizen of the Net, to sneak
9 company hands into a personal information cookie jar,
10 and to use this database, along with other lists, to
11 compile sophisticated, highly personal consumer profiles
12 of people's hobbies, buying habits, financial
13 information, health information, who they contact or
14 converse with, when, and for how long.

15 In short, that wondrous wire may also allow
16 digital desperadoes to roam the electronic frontier
17 unchecked by any high-tech sheriff or adherence to any
18 code of electronic ethics.

19 The fact is that the technology itself is
20 neither good nor bad. It only becomes so when it is
21 animated through human interaction and imbued with our
22 values as a society.

23 Interestingly, 50 years ago, in 1947, right
24 around the time the first electronic computer was
25 created, a French Jesuit priest named Teilhard de

1 Chardin, talked about this emerging Worldwide Web. He
2 wrote, however, not about the sheer wonder of a linked
3 network of machinery, but rather about the true
4 intelligence of such a network, the human aspect of it.

5 In a book called The Formation of the
6 Noosphere, a half century ago, he wrote the following:
7 "No one can deny that a network (a world network) of
8 economic and psychic affiliations is being woven at ever
9 increasing speed which envelops and constantly
10 penetrates more deeply within each of us. With every
11 day that passes, it becomes a little more impossible for
12 us to act or think otherwise than collectively."

13 This philosophy foreshadowed what we would
14 hear from Marshall McLuhan, who based much of his Global
15 Village philosophy as a secular shorthand, in his own
16 words, for much of Teilhard's philosophy. He built much
17 of his on Teilhard's.

18 Teilhard is an appropriate person to use as a
19 touchstone for a discussion on the console connection
20 between cells and circuitry, because he was both
21 theologian and scientist -- paleontologist by training.

22 As a student at Boston College, I learned what
23 Teilhard envisioned 50 years ago, at the birth of the
24 electronic computer, was a convergence of humans in a
25 single, massive noosphere (from the Greek meaning

1 "noos," means "mind"). And although Teilhard
2 articulated his vision using a religious lexicon, his
3 concept of a web of human connectivity that would
4 envelop the earth and be propelled by human
5 consciousness, sounds remarkably similar to today's
6 Net.

7 With a community, the whole becomes much
8 greater than the sum of its parts. This was Teilhard's
9 main point, and it's also true of computer networks from
10 a technology standpoint.

11 And how do we ensure that these early console
12 communities on the electronic frontier take root and
13 grow? The thing to remember is that communities --
14 whether real or virtual -- thrive on trust.

15 Electronic commerce, therefore, will only
16 succeed in our digital domain if there is trust and
17 security and privacy, and an enforceable code of
18 electronic ethics.

19 When companies surreptitiously sift out bits
20 of the data stream and compile lists of highly personal
21 information, this undermines trust in the community.

22 If Internet access providers fail to give
23 parents the blocking technology necessary to deal with
24 the sinister side of cyberspace, this discourages
25 parents and teachers and community libraries from having

1 youngsters freely use this technology.

2 When young kids can only read an on-line
3 story, win a prize, or play a game, if they submit
4 information about themselves and their families, then
5 parents become rightly outraged.

6 The digital duality of virtual reality
7 requires us to insist upon measures that establish
8 trust. Without it, the web will wither into some
9 lawless labyrinth of wires and switches. Electronic
10 commerce will never truly take off in a Wild West-like
11 environment because people won't trust it. We can't
12 expect everyone in cyberspace to be some version of John
13 Wayne or Annie Oakley protecting themselves, it won't
14 work.

15 What can policymakers do, or not do, to hasten
16 the adoption of measures for security, privacy, and
17 trust in the electronic environment? Let me outline for
18 you legislation that I have developed which tries to
19 bring together and integrate the distinct public policy
20 pieces that I believe we need in order to simultaneously
21 advance Net civilization and Net American economic
22 growth.

23 As many of you know, my privacy position is
24 premised on the belief that regardless of the technology
25 that consumers use, their privacy rights and

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1 expectations remain a constant. Whether they are using
2 a phone, a TV, a TV clicker, a satellite dish, or a
3 modem, every consumer should enjoy a Privacy Bill of
4 Rights for the Information Age. These core rights are
5 embodied in a proposal that I have advocated for many
6 years, and I call it Knowledge, Notice, and No.

7 In short, consumers and parents should get the
8 following three basic rights:

9 Number one, knowledge that information is
10 being collected about them. This is very important
11 because digital technologies increasingly allow people
12 to electronically glean personal information about users
13 surreptitiously. I would note here many Internet
14 companies, for example, use cookies, unbeknownst to the
15 user, and keep track of what Web sites a person visits.

16 Adequate and conspicuous notice that any
17 personal information collected is intended by the
18 recipient for reuse or resale.

19 And number three, the right of a consumer to
20 say no, and to curtail or prohibit such reuse or sale of
21 their personal information.

22 My legislation asks the FCC and FTC to look at
23 how these three privacy rights can be exercised by
24 consumers through industry standards and self-
25 regulation, technological tools that empower consumers

1 directly, and finally, a legally binding regulatory
2 backstop where the marketplace -- when the marketplace
3 and technology fail to adequately protect the public
4 interest.

5 Now, I realize that many observers will fret
6 about the possibility of onerous government
7 intervention. There are people who see a ne'er-do'well
8 bureaucrat or knee-jerk regulator behind every tree in
9 Washington. But my proposal is a middle ground between
10 a purely marketplace approach on the one hand, and a
11 more heavy-handed governmentwide Federal superagency to
12 police the data industry.

13 I believe it is in the industry's interests to
14 work towards practical solutions now before these issues
15 get out of control. A marketplace solution can help to
16 solve some of the problems, but not all of them. In
17 particular, a purely marketplace approach will fail in
18 instances where the customers have no idea that a
19 commercial entity is using data in ways that customers
20 disapprove. Frankly, it is too expensive for most
21 consumers and next to impossible for such consumers to
22 continually monitor whether and when commercial entities
23 release personal information.

24 In the worst case scenario, leaving cyberspace
25 customers unprotected against invasive or underhanded

1 disclosure by those operating on the margins of
2 acceptable conduct is terrible public policy. And, I
3 might add, bad for everybody else's business. We
4 shouldn't let the conduct of 5 percent of the
5 marketplace pollute the environment for the 95 percent
6 who are good corporate cyber-citizens.

7 I think the consumer needs legally enforceable
8 privacy rights, period. Some of the current information
9 practices of some of these companies simply ought to be
10 against the law. That doesn't necessitate onerous
11 government regulation. We can allow private sector
12 contractual arrangements to take care of the privacy
13 rights and informational needs of consumers and
14 marketplace entities. But there must be a backstop.
15 There has to be a privacy safety net, and every consumer
16 should be guaranteed a minimum level of privacy
17 protection. They can negotiate in the marketplace for
18 better protection, if they want, but no one should be
19 completely left without any recourse.

20 Ensuring the vision of Teilhard and McLuhan,
21 of a Worldwide Web of human connectivity and economic
22 and social progress is our dream. Making America the
23 world leader in these technologies is our dream.

24 Well, as the Irish poet William Butler Yeats
25 once said, "In dreams begins responsibility." But I

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1 think it is as a result, our responsibility to act to
2 improve consumer privacy and parental empowerment while
3 the Net is in its relative commercial infancy.

4 I think we should act to give legal rights to
5 Internet companies to customize their network needs and
6 get access to the unbundled elements of the local loop.
7 I also think we should revamp our nation's encryption
8 policy to take note of the rapidly changing economic and
9 political circumstances.

10 Right now, many of these issues are at a
11 stalemate. But technology marches on and does not sit
12 idly by waiting for policy to catch up.

13 I will be working in our committee with
14 Chairman Tozan towards the goal of working on these
15 issues in the weeks and months ahead. These are the
16 critical issues that are going to ensure that, in fact,
17 we fully maximize the potential of the usage of Internet
18 technology. If we don't do it, you will not be able to
19 convince the great mass of Middle America to use the
20 technology. They are the ones with money in their
21 pocket after all, and they still are technophobic to
22 begin with, much less suspicious of any compromise of
23 their personal information. So we must deal with the
24 reality that a community, a business shopping center, is
25 successful if ordinary, decent families believe they can

1 come down and shop in security.

2 Well, if we're going to try to create a
3 virtual reality version of that shopping center, we must
4 give families that same sense of security, or else we
5 will only maximize 10 percent of the potential that the
6 Internet and all cyber technologies offer. That's the
7 reality of it. Most of us, at a certain age, still have
8 great apprehension about these technologies. So the
9 government has to work hand-in-hand with the private
10 sector, with you, who are in this room. And I know
11 you're apprehensive about it.

12 And I had my best example of it when they
13 closed down -- they were closing down Ft. Devins as part
14 of the BRAC process in my district a couple of years
15 ago. And I got a call, as Ft. Devins was closing very
16 quickly, from a woman that said to me that her daughter
17 was engaged to a soldier at Ft. Devins and they wanted
18 to have the marriage completed before the soldier was
19 transferred down to Texas, but there was only a couple
20 of weeks left to go.

21 And so I called the colonel out at Ft. Devins
22 and he couldn't get it done, and I had to completely go
23 up the chain of command, and I got the commanding
24 general and I made this personal, compelling request
25 that this young woman be allowed to marry the soldier

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1 before he's transferred to Texas. And the marriage took
2 place, and very surprisingly, and gratifyingly, because
3 it doesn't happen that often, the day after the wedding,
4 I received a beautiful bouquet from the mother and the
5 daughter for making the marriage possible.

6 But later that afternoon, I got another
7 telephone call from Texas, and it just came from the
8 soldier and he just got on the line and he said,
9 "Congressman, the next time, why don't you just mind
10 your own damn business." So clearly there's a balance
11 we're going to have to strike, and any deliberation
12 which we make on these issues, and we'll try to be wise
13 in doing so, but I know that in working with Chairman
14 Tozan and Chairman Bliley, as we have on every issue
15 over the past years, we'll be able to do so on a
16 bipartisan basis towards the goal of advancing not only
17 wise technologies in encryption, but wise technologies
18 in all areas of privacy along the line in the years
19 ahead.

20 I thank you for the invitation to address you
21 this morning, and I thank Ron especially for that overly
22 generous introduction. Thank you very much.

23 * * * * *

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REPORTER'S CERTIFICATE

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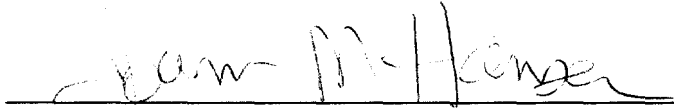
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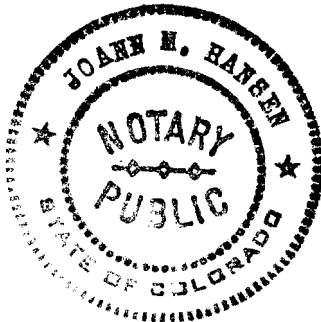
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IN WITNESS WHEREOF, I have affixed my
signature and seal this 4th day of November, 1997.

My commission expires February 11, 1999.


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